

The global war on terrorism law constitutional administrative essay

Law



On September 11th 2001 the United States of America was hit by the most tragic terrorist attack in its history. In response to the attack, the president of the United States, George W. Bush declared a 'war on terror'. This "war" has had serious consequences on the protection of Human Rights and Civil Protections for many people[1]. The words "Terrorism" and "Human Rights" have varied definitions by several different people and bodies. I will talk about these two words quite often throughout the essay, so for that reason I am going to define what I mean by "Terrorism" and "Human Rights" according to the Office of the United Nations High Commissioner for Human Rights. Firstly Human rights are defined as "universal values and legal guarantees that protect individuals and groups against actions or omissions that interfere with fundamental freedoms, entitlements and human dignity." Human Rights are universal; they belong to all human beings and are invisible[2]. There are several different laws, declarations, conventions and other legislation regarding what everyone's human rights are. The three main pieces of legislation that I will be using are the "Geneva Convention", the "International Covenant on Civil and Political Rights (ICCPR)" and the "European Convention on Human Rights (ECHR)", however I may refer to others as well. Secondly Terrorism is harder to define as it has never actually been defined in international law. Many bodies have defined it, but there isn't a certain definition. Terrorism is commonly defined as "acts of violence that target civilians in the pursuit of political or ideological aims[3]. In 1994, the General Assembly's Declaration on Measures to Eliminate International Terrorism defined terrorism as "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or

particular persons for political purposes" and that such acts " are in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them[4]." Throughout this essay I am going to look at what the Bush Administration did during the " war on terror" and how their acts and omissions violated Human Rights Laws. One of the most important violations of Human Rights is the restriction and suspension of Habeas Corpus. This is a writ that requires detainees to be brought before a judge and have fair trial. It is to ensure that people who are detained with insufficient evidence can be released. Articles 9-11 of the ICCPR give everyone the right of Habeas Corpus[5]. This has been restricted in many ways, but mainly through Arbitrary Detention. Arbitrary Detention is the arrest or detention of a person where there is no due process of law; that is little where there is little or no evidence that they have committed a crime[6]. Arbitrary Detention breaches Articles 9 and 11 of ICCPR[7]. One of the most infamous Arbitrary Detention centres is the Guantanamo Bay detention camp. Guantanamo Bay is a detainment and interrogation facility used by the US Military and CIA located in Cuba. The reasoning for it being located here is because of it being outside of the jurisdiction of US Law. The detentions here have incited many US and international court cases that focus mainly on the issue of Habeas Corpus. These court cases created a game of " legal ping pong" between the judicial and political branches of government in America, that ultimately lead to the 2008 Boumediene Judgement[8]. In 2004 a series of cases came before the US courts regarding Habeas Corpus. The two main cases were Hamdi v. Rumsfeld and Rasual &

Ors v. Bush. In Hamdi v. Rumsfeld, the US Supreme Court held that US Nationals had certain constitutional rights, including the right to Habeas Corpus[9]. There were a limited number of cases that included US nationals as detainees, but where they were, the result of this case was of significant importance. The case of Rasual & Ors v. Bush decided the right of Habeas Corpus of the majority of detainees who were not US nationals. The court found that there was nothing to prevent habeas corpus being exercised for non-US nationals[10]. These cases illustrate how the judicial branch of the government is trying to uphold human rights law. In response to these judgements the government passed the Detainee Treatment Act 2005 (DTA), this piece of legislation made it clear that there was no right to habeas corpus for Guantanamo detainees[11]. This indicates how the government are trying to bypass court rulings in the form of creating new legislation. The case of Hamdan v. Rumsfeld claimed that the DTA had stripped Hamdan of his right to habeas corpus. The US Supreme Court avoided saying whether or not the act was constitutional, but did say that the law didn't apply to him, because his case was on going at the time the legislation was adopted. The DTA allowed the restriction of habeas corpus on non US nationals, but the question of whether or not it was constitutional was unanswered until 2008 in the Boumediene Judgement. In Boumediene v. Bush the issue was finally resolved. The US Supreme Court ruled that "' enemy combatants' held by the United States in Guantanamo Bay have the right under US Constitution to challenge their detention before regular courts[12]". This can be seen as one of the most important judgements the US Supreme Court made regarding the issue because it gives everyone the right to Habeas Corpus

whilst detained in Guantanamo Bay. There have been similar situations in the UK regarding the lawfulness of detention. In 2004 the Belmarsh Judgement was made by the Court of the House of Lords. The case in question was *A & Ors* concerning the detention of non-UK nationals in Belmarsh Prison. The detainees were suspected to be involved in international terrorism; the Anti-Terrorism, Crime and Security Act 2001[13] allowed this. When the case was brought before the court, they held that section 23 of the Anti-terrorism, Crime and Security Act 2001 was incompatible with the ECHR and that it discriminated against non-UK national. Lord Bingham also found the detentions to be a violation of article 26 of the ICCPR[14]. These cases demonstrate how the government are creating laws that violate international human rights laws in that they affect writs such as habeas corpus or rights for example lawful detention. It can also be seen that the judiciary are trying to uphold international human rights laws and stop these violated being made by the government. We will see this develop throughout the different areas of human rights law that have been violated. Preventive Detention has been heavily criticised for the seriousness of its unreliability. It is defined as " an order permitting a person to be taken into custody, without criminal charge or trial, and deprived of their personal liberty by executive order for the purpose of preventing the detainee from committing an imminent terrorist act[15]." The issue with this is that a person is being detained before he has committed a terrorist crime, predictions like this can be very unreliable.